

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION**

WILLIAM OWENS,	:	Case No. 1:23-cv-487
	:	
Plaintiff,	:	Judge Timothy S. Black
	:	
vs.	:	
	:	
MICHAEL HAMILTON and S&K	:	
MIDWEST LLC,	:	
	:	
Defendants.	:	

**ORDER VACATING DEFAULT**

Courts prefer to resolve disputes on the merits upon all sides being heard. Thus, fairness sometimes abhors a judgment by default, especially if an already percolating dispute were quietly reduced to judgment in the absence of the other side's adversarial debate and proof.

Here, Plaintiff's process server's affidavit purports to evidence Defendants Hamilton's and S&K Midwest LLC's receipt of service on 11/28/2023 (Doc. 14). The Plaintiff thereupon moved for entry of default, and the Clerk entered default. (Doc. 15). Contrary to Defendants' indignation, however, no entry of default judgment ever occurred.

Fourteen days after default was entered, Defendants retained counsel in this litigation (*see* Doc. 22 at Exs. 1 and 2) and promptly thereafter filed a motion for relief from default and default judgment (Doc. 22). Upon review, as service was not properly achieved, the entry of default is **VACATED** for good cause under Fed. R. Civ. P. 55(c),

to wit, improper service of the Complaint and Defendants' immediate indication of a good faith basis to defend on the merits.

The parties have traveled a long road advancing their claims and defenses, such that neither law nor equity would sustain a judgment achieved outside adversarial due process (or settlement). *See* Fed. R. Civ. P. Rule 60(b)(4) and (6). Equity and the law would abhor a judgment by default under such circumstances.

Plaintiff shall forthwith effect proper service upon Defendants (or reach a stipulation of service), whereupon Defendants shall file their pleadings responsive to the complaint (Doc. 1) within 21 days of receipt of service or a stipulation as to it.

**IT IS SO ORDERED.<sup>1</sup>**

Date: 1/24/2025

*s/Timothy S. Black*  
Timothy S. Black  
United States District Judge

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<sup>1</sup> This Order resolves the parties' respective motions found at Docs. 16 and 22, and those motions are hereby **TERMINATED**.